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Summary record of the 3248th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 16 March 2016, at 3 p.m.

Chair: Mr. Salvioli

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Costa Rica (CCPR/C/CRI/6; CCPR/C/CRI /Q/6 and Add.1)

1. *At the invitation of the Chair, the delegation of Costa Rica took places at the Committee table.*

2. **Mr. Solano** (Costa Rica), introducing the sixth periodic report of Costa Rica (CCPR/C/CRI/6), said that the country's legislative framework contained numerous provisions designed to promote and protect human rights, notably article 1 of the Constitution which set forth the multi-ethnic and multicultural nature of Costa Rican society. International human rights law took precedence over domestic legislation and the Constitutional Court could declare invalid acts and norms that failed to comply with its provisions. The Ombudsman's Office, the Comptroller-General's Office, the Regulatory Authority for Public Services and the Superintendency of Telecommunications and Financial Institutions served as part of a robust monitoring infrastructure that guaranteed the effective implementation of the Covenant. The Government had also established the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations which worked closely with civil society to coordinate the national implementation of international human rights obligations.

3. The Government had amended the Labour Act in January 2016 so as to expressly prohibit all forms of discrimination in the workplace and had introduced an accelerated conflict resolution procedure for individual and collective labour disputes. Similarly, it had amended the Code of Civil Procedure in order to increase the efficiency and effectiveness of civil and commercial dispute proceedings.

4. Efforts had also been made to tackle both structural and societal discrimination against minority groups including persons of African descent. The Government had designed a national policy and action plan for a society free from racism, racial discrimination and xenophobia which promoted equality and eradicated discriminatory cultural beliefs and practices. It had also adopted Decree No. 388-35-RE in January establishing the Office of Presidential Commissioner for Matters Relating to Persons of African Descent and the 2015-2018 National Plan for Persons of African Descent. Steps had been taken to promote, protect and uphold the rights of lesbian, gay, bisexual, transgender and intersex persons, including by commemorating annually the International Day against Homophobia, Transphobia and Biphobia on 17 May.

5. As to migrants and refugees, the Government had introduced the Migration Act in 2010 with the aim of managing migratory flows and ensuring respect for the principles of equality, equity, non-discrimination and interculturalism. It had also established the Directorate-General for Migration which was tasked with formulating, implementing and promoting integration policies. In November 2015, steps had been taken to dismantle a criminal gang responsible for trafficking thousands of Cubans across Central America via Costa Rica to the United States. Following the discovery of the illegal migration route, neighbouring countries had closed their borders to the Cuban trafficking victims, leaving thousands of persons stranded in Costa Rica. The Government had housed and granted temporary transit permits to the trafficking victims while attempting to find a diplomatic solution to the situation. Its efforts had eventually led to the Governments of El Salvador, Guatemala and Mexico opening their borders and allowing the vast majority of the Cuban migrants to continue their journey legally.

6. The Government had adopted numerous measures to ensure the respect of the traditions and world views of indigenous peoples, including the implementation of the

provisions of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples, and the appointment of a national indigenous advisor. It remained committed to engaging with indigenous communities and had established a mechanism for consultation in order to gain their free, prior and informed consent on matters affecting their lands and livelihoods. For example, consultations had recently been held between the public authorities and the Térraba indigenous community regarding the management of an aqueduct located in its territory.

7. Concerning the prison system, the Government had taken numerous steps to reduce prison overcrowding, such as the promotion of alternative measures to imprisonment, the introduction of the Semi-Open Rehabilitation Programme, the establishment of strategies to reduce recidivism and facilitate social reinsertion, and the planned construction of new prisons. Such efforts had reduced prison overcrowding by 55 per cent by the end of 2014.

8. Lastly, the Government had undertaken a series of consultations to discuss the issue of in vitro fertilization. On 26 February 2016, the Inter-American Court of Human Rights had stated in follow-up to its ruling on the case of *Artavia Murillo et al. v. Costa Rica* that Executive Decree No. 39210-MP-S of 11 September 2015 authorizing the use of in vitro fertilization and embryo transfer should be upheld. In vitro fertilization techniques were thus no longer prohibited in Costa Rica.

9. **Ms. Seibert-Fohr** commended Costa Rica on its long-standing advocacy of human rights and its efforts to live up to its obligations under the Covenant. She said that while she welcomed the recognition by the Constitutional Chamber of the Supreme Court that international human rights instruments took precedence over the Constitution whenever they encompassed wider guarantees than the Constitution itself, she would be interested to hear about specific cases in which the Covenant had been invoked by the courts; it would also be useful to learn how the State party ensured that judges were aware of its provisions. Noting the creation of the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations as a positive development, she invited the delegation to comment on concerns that it was not yet fully operational, that its activities were somewhat limited and its funding inadequate and that it engaged in insufficient consultation with civil society. It was hoped that, in future, the Commission would respond comprehensively to the Committee's recommendations, as the information received in respect of the previous concluding observations had been late and incomplete.

10. With regard to the issues raised in paragraph 10 of the list of issues, she asked whether women could be prosecuted for having an abortion if the pregnancy was the result of rape or incest. Noting that, in practice, abortions had been denied even when a woman's health was at risk, she wondered whether there were any legal criteria for determining such risks. Was it true that therapeutic abortions were not granted unless a woman's life was in very serious danger? She would be interested to know about any protocols issued on the performance of legal abortions. She invited the delegation to comment on reports that women were subjected to the discretion of doctors in accessing legal abortion services and that doctors often refused to perform legal abortion procedures for fear of prosecution, as they could be sentenced to up to 10 years in prison if found guilty of performing an abortion deemed illegal under the Criminal Code. What measures were in place to ensure that doctors did not risk prosecution for performing an abortion if the life or health of the woman was at risk? She would be grateful for information on measures aimed at preventing unwanted pregnancies, such as awareness-raising programmes in the media and the education system, and on whether contraceptives, including emergency contraception, were widely available at affordable prices. The delegation might also comment on reports of obstetric violence in the health system, including a lack of access to certain necessary procedures and implementation of medical or surgical manoeuvres causing physical

damage to the woman or fetus, as well as complaints of a lack of financial and human resources to adequately attend to women during pregnancy and childbirth, especially in provincial hospitals.

11. On the issue of in vitro fertilization, she recalled that in a 2012 decision, the Inter-American Court of Human Rights had concluded that the Costa Rican ban on in vitro fertilization was in violation of the rights to privacy and to found a family, which were covered under the Covenant, and had ordered the State party to legalize the procedure within six months. In recent weeks, the Court had issued a resolution finding that Costa Rica had not complied with that order. She would be interested to know what the State party's position was with respect to implementation of that decision.

12. **Mr. Vardzelashvili** expressed concern that, although the number of appeals to the Office of the Ombudsman had grown significantly in recent years, there had not been a corresponding increase in funding, and the Office's budget had in fact been cut slightly in 2016 despite an overall increase in State expenditure; insufficient funding could jeopardize the effective functioning of the institution. Noting that the Legislative Assembly selected the Deputy Ombudsman from a list of three candidates proposed by the Ombudsman, he asked whether it might not be more reasonable to allow the Ombudsman to select the deputy him- or herself through a transparent procedure, without interference from any branch of government, so as to ensure the autonomy of the institution.

13. With regard to racial discrimination and xenophobia, he said that he welcomed the efforts made by the State party to acknowledge the diversity of society and promote integration and requested information on the practical impact of such efforts for the migrant and refugee population. He invited the delegation to comment on the findings of a recent report which pointed to very high rates of unemployment, a high level of engagement in the informal sector, reduced earnings compared to Costa Rican citizens, and lack of access to universities among the refugee population. Did the Government intend to address those problems, and were there any plans to improve monitoring of the employment conditions of the migrant population? He would welcome information on the institutional and legislative problems that made it difficult for migrants to obtain or renew identity documents. He invited the delegation to comment on the challenges posed by integration because of negative public opinion on migrants and refugees, who were sometimes perceived as a security threat. Recalling that the Committee had expressed concern in 2007 at statements made by some State authorities linking the rising crime rate in the country with the presence of Colombians, he asked the delegation to comment on the reasons for the recent decision by the Ministry of Public Security to deny entry to Costa Rica to a Nicaraguan comedian and whether such a decision might contribute to the stigmatization of the Nicaraguan community.

14. **Mr. de Frouville** commended the State party on its exemplary contribution to human rights at the regional level. He said that he welcomed the efforts made to combat discrimination based on sexual orientation; in that connection, he would appreciate details on the scope and content of the decree of May 2015 on combating discrimination on the grounds of sexual orientation in State institutions and whether it provided for a criminal prohibition of such discrimination. With regard to the law on the prohibition of discrimination based on sexual orientation in establishments for the care of older persons, he wondered whether there was any broader prohibition of such discrimination and, if not, whether there were any plans to fill that gap. Noting that the State party did not keep specific statistics on violence against lesbian, gay, bisexual, transgender or intersex (LGBTI) persons, he asked what data had been used in the 2015 report by the Inter-American Commission on Human Rights expressing concern about the issue, whether they were available to the State and whether they might be used to better understand the scale of the phenomenon. He invited the delegation to comment on the state of the national debate on

the issue of same-sex marriage. He would welcome information on obstacles to accessing antiretroviral treatment for persons living with HIV/AIDS, particularly for vulnerable groups such as migrants, drug addicts and LGBTI persons. Noting the high rate of unemployment among persons living with HIV/AIDS, he invited the delegation to comment on discrimination against that group and to provide details on the functioning of the National Council on Comprehensive Treatment of HIV/AIDS (CONASIDA) and the number and types of cases of alleged discrimination it had handled.

15. **Ms. Waterval** said that, despite the various initiatives taken to eliminate the gender pay gap and discrimination against women in the workplace, women remained underrepresented in both the formal and informal employment sectors. She requested the delegation to provide details on the impact of those initiatives.

16. She asked for further information on the measures planned to deal with the forced sterilization of persons with disabilities. It seemed that national legislation did not recognize discrimination on the ground of disability. She asked the delegation to comment on that matter and to indicate the measures being taken to improve the situation of persons with disabilities, particularly women and indigenous persons. It was not clear why persons with disabilities would be forced to undergo sterilization; she requested clarification in that regard.

17. She commended the State party's efforts to comply with the principle of non-refoulement but encouraged the State to apply that principle appropriately and to reduce the processing time for asylum applications. She requested further information about the reparation granted to women victims of violence, and she asked why so few of the reported cases of domestic violence had resulted in the conviction and sentencing of the perpetrators. It would also be useful to have statistical data on domestic violence covering the year 2015. Lastly, she wished to know more about the State party's efforts to provide care to women victims of violence in indigenous communities.

18. **Mr. Politi**, referring to women's representation in decision-making positions, asked the delegation to clarify the meaning of employment in "high-level occupations" and whether that category included any elected positions. He said that he wished to know whether the quota system set out in the Electoral Code was fully respected by political parties and whether current legislation provided for specific measures to ensure women's adequate representation both in party structures and in elected positions. He asked whether the State party had implemented the recommendation made by the Committee on the Elimination of Discrimination against Women concerning the adoption of temporary measures to guarantee women's representation in government bodies at the decision-making level. Noting that the legislative advances made had not produced the expected results, he asked whether any further measures were planned to address the problem of women's underrepresentation.

19. He requested information on any measures to prevent and combat double discrimination against indigenous women. He asked whether the Government had adopted a national gender plan for indigenous women, as recommended by the Committee on the Elimination of Racial Discrimination, and if so, how that plan had been implemented. He wished to know whether the State party would be able to provide data disaggregated by ethnicity in the near future.

20. It had been widely reported that Costa Rica was a source, transit and destination country for trafficking in men, women and children for purposes of sexual exploitation and forced labour. The use of children for purposes of drug trafficking and child sex tourism was also a problem. He commended the State party for taking significant steps to address those issues and asked what budget had been allocated for the implementation of Act No.

9095 on trafficking in persons. It would be useful to have a full account of the projects to combat human trafficking that had been approved for 2016.

21. The delegation should also clarify the exact penalties established for the offence of human trafficking. He asked whether Act No. 9095 provided for improved mechanisms to identify victims and to collect data on human trafficking, which was currently very limited. It would be useful if the delegation could provide disaggregated data on the number of complaints of human trafficking, the sentences handed down and the reparation provided to the victims. He asked how long it took on average to issue a temporary visa to a foreign victim of trafficking and what kinds of services were provided to underage victims. He also wished to know more about the operations of the special police unit and prosecutorial unit dealing with the issue.

The meeting was suspended at 4.45 p.m. and resumed at 5.10 p.m.

22. **Mr. Carvajal** (Costa Rica) said that, in 2000, the Supreme Court had declared null and void the executive decree regulating in vitro fertilization. That annulment had created a legal gap that for many years had been interpreted as a prohibition on in vitro fertilization. In 2012, the Inter-American Court of Human Rights had ruled that the prohibition violated the American Convention on Human Rights and had ordered the State to take measures to ensure that infertile persons had access to such treatment. It had also ordered measures to provide compensation and ensure non-repetition.

23. In response, the Government had drafted four bills to regulate in vitro fertilization. However, none of those bills had been approved by parliament. The executive branch, acting within its constitutional powers, had therefore decided to issue a decree to fill the legal gap and comply with the court order. The decree had re-established a number of rights, such as the right to privacy and family life, the right to sexual health and the right to equality and non-discrimination. It had been accepted by the Inter-American Court of Human Rights as a mechanism for complying with its judgement of 2012. The decree recognized the right to access in vitro fertilization technology without discrimination and established clear regulations governing the handling of human embryos. It also granted public authorities the power to monitor the practice of in vitro fertilization and tasked the Social Insurance Fund of Costa Rica with introducing the treatment in public reproductive health programmes.

24. The decree had been the subject of an application for constitutional review that had resulted in its annulment. However, the Inter-American Court of Human Rights had ordered that it should remain in force until regulations with a higher legal status were passed to govern in vitro fertilization. The Ministry of Health had then drawn up technical standards on the decree's implementation, which had been signed on 15 March 2016. Private sector health-care providers were likely to begin offering in vitro fertilization treatment soon after the entry into force of the technical standards, and there was a deadline of two years for the public sector to begin offering the treatment. The possibility of adopting a law governing in vitro fertilization remained open, but such a law would have to comply strictly with inter-American standards. Until that time, his Government would continue to take appropriate steps to ensure compliance with the 2012 ruling of the Inter-American Court of Human Rights and to ensure that reproductive rights were protected in Costa Rica.

25. Costa Rica had made significant progress in guaranteeing the rights of LGBTI persons and in eliminating discrimination on the ground of sexual orientation and sexual identity. Measures taken in that regard included Executive Decree No. 38999 of 12 May 2015, on a policy to eliminate discrimination against sexually diverse population groups in the executive branch, and Directive No. 025-P, requesting all bodies in the decentralized administration to declare themselves to be free of discrimination and to adopt a non-discrimination policy.

26. A number of legislative and policy measures to promote and protect respect for sexual diversity had been adopted across the spectrum of government and society in Costa Rica. Relevant examples included the recent ordering of prison authorities, by the Constitutional Chamber of the Supreme Court, to allow persons deprived of their liberty to dress according to their gender identity and to permit intimate visits between persons of the same sex; bill No. 19841 on the recognition of the rights to gender identity and equality before the law; Act No. 9343 prohibiting discrimination in the workplace on grounds of sexual diversity; and Executive Decree No. 39210 of 10 September 2015 prohibiting discrimination against persons seeking in vitro fertilization on grounds of sexual diversity. In addition, the Office of the Ombudsman had launched a campaign against discrimination on grounds of sexual diversity. Regarding same-sex couples, specifically, bill No. 18483, amending the Family Code, sought to regulate de facto unions between same-sex couples; Act No. 9155 of 3 July 2013 guaranteed access for partners in a de facto union to social and inheritance rights; and the social security system had been amended on 9 October 2014 to permit same-sex couples to acquire insurance coverage. A San José Family Court had recognized de facto unions between same-sex couples in judgement No. 2015-00270 of 20 April 2015.

27. The Constitutional Chamber of the Supreme Court had ruled in 2006 by a vote of 5 to 2 that the provision of the Family Code which prohibited same-sex marriage was not unconstitutional. However, a new challenge to its constitutionality had recently been filed and accepted for consideration by the Constitutional Chamber.

28. **Ms. Whyte Gómez** (Costa Rica) said that the number of complaints filed with the Office of the Ombudsman had increased by about 8 per cent since 2010 and the budget allocated to the Office had increased in real terms by about 7 per cent.

29. **Ms. Sánchez Venegas** (Costa Rica) said that the Office of the Ombudsman, which had been established in 1992, operated independently and was funded by the legislature.

30. The Legislative Assembly was considering a bill on HIV/AIDS that provided for comprehensive treatment of persons living with HIV/AIDS and required public and private institutions to introduce procedures to enable such persons to exercise their rights. The same bill prohibited stigmatization and discriminatory practices, including in the workplace, and stated that persons living with HIV/AIDS were entitled to comprehensive health care and to high-quality prophylactic and antiretroviral treatment. The Assembly's Human Rights Committee had also drafted a bill concerning the prevention and penalization of all forms of discrimination. Article 6 (c) of that bill expressly prohibited employers in both private and public sectors from requiring job applicants or staff members to undergo or to submit the results of an HIV/AIDS test.

31. Other legislative measures under consideration included a bill on freedom of religion and worship and a bill amending articles 75 and 194 of the Constitution with a view to enshrining the secular character of the State and underscoring its historic commitment to the defence of equality and liberty.

32. On 17 December 2015 the Legislative Assembly had decided to repeal subparagraphs (b), (ch) and (d) of article 17 of the 1954 Radio Act, which prohibited the transmission and circulation of false, alarming or unfounded information, and the use of vulgar or offensive language that impugned a person's honour or undermined his or her interests. The new text would ensure that the country complied with its international human rights obligation to prohibit censorship and protect freedom of expression and information.

33. Bill No. 19490 provided for amendments to the Criminal Code and the Code of Criminal Procedure in response to a petition submitted by the High-level Commission on Prison Overcrowding in September 2013 urging the Legislative Assembly to update the criminal justice system. Judges and prosecutors would have greater technical and legal

latitude to assess cases and their impact on victims, and to promote restorative justice for victims and communities and the rehabilitation of offenders. The bill was being considered by the Legislative Assembly.

34. **Mr. Solano** (Costa Rica) said that the Directorate-General for Migration had decided, on 10 March 2016, to prevent the Nicaraguan comedian Reynaldo Ruiz from entering the country out of concern for his personal safety and with a view to maintaining law and order. The comedian had consistently mocked Costa Ricans and their identity, promoting racist and xenophobic discourse in Nicaragua and undermining relations between the two countries. The Directorate-General had taken its decision on the basis of article 61 of the Migration Act.

35. The principle of parity of nomination had been incorporated in the Electoral Code in 2009. However, women continued to be underrepresented in decision-making positions and electoral posts. In the 2014 general elections the percentage of elected women candidates had declined to 33 per cent. The figures for recent municipal elections had also been very low. As the idea of alternating male and female candidates supported by the Supreme Election Tribunal had proved ineffective, the Constitutional Chamber had ruled in favour of so-called "horizontal parity", meaning that women would head the election lists for every political party in a minimum number of the country's provinces. It was hoped that the percentage of elected women candidates would increase to at least 40 per cent in the next elections.

36. **Mr. Carvajal** (Costa Rica) said that the Inter-American Commission on Human Rights had considered petitions Nos. 1159/08 and 1377/13 concerning the impossibility of conducting therapeutic abortions in Costa Rica. The State had proposed a friendly settlement with the parties involved and a dialogue had been initiated to restore their allegedly violated rights. The first meeting had been held at Commission headquarters on 21 October 2015. A second meeting, on 30 November 2015, had been attended by representatives of the Ministry of Foreign Affairs and Worship, the Ministry of Health, the National Institute for Women, the Costa Rican Social Security Fund, and the Human Rights and Reproductive Health Centre and by the petitioners. The idea was to prepare Ministry of Health standards for therapeutic abortions and subsequently to develop an institutional protocol to be implemented by the Costa Rican Social Security Fund. It had been agreed to hold a further meeting on 9 February 2016. The standards proposed by the Ministry of Health had been shared on that occasion with the alleged victims, and the Social Security Fund had explained the proposed procedures. Arrangements for meetings of a technical working group had been delayed because of the complex and controversial nature of the issue. The Ministry of Health considered that it should be addressed by the high-calibre technical team that was currently working on the in vitro fertilization standards. It had therefore scheduled 1 April 2016 as the starting date.

37. **Ms. Whyte Gómez** (Costa Rica) said that the rights of persons with disabilities were recognized and forced sterilization was not conducted without either their express consent or that of their parents. Act No. 7600 on Equal Opportunities for Persons with Disabilities, which had been adopted in 1996, required the State to combat all forms of discrimination, for instance in terms of access to programmes or services. In addition, recent labour law reforms clearly prohibited discrimination against persons with disabilities in the workplace. Costa Rica had ratified the Convention on the Rights of Persons with Disabilities and was implementing a National Disability Policy (2011-2021).

The meeting rose at 6.05 p.m.